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NO. 95-436

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

MACH-TECH, LTD. PARTNERSHIP and SERV-TECH, INC., Tax Matters Partner,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petition for Writ of Certiorari to The United States Court Of Appeals For The Fifth Circuit

BRIEF OF AMICUS CURIAE, INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA, IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

What degree of "control" must a taxpayer have over its research and development in order to be able to deduct its related research and experimental expenditures under Section 174 of the Internal Revenue Code.

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BRIEF OF AMICUS CURIAE, INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA, IN SUPPORT OF PETITIONERS

INTEREST OF AMICUS CURIAE

The Information Technology Association of America (ITAA) is the leading trade association serving the information technology industry with over 6700 direct and affiliate member companies. Founded in 1961, the ITAA's constituency includes companies in every facet of the information technology industry including computer hardware, software, information services and communications.

The goal of ITAA is to foster an environment which is conducive to the health, prosperity and competitive nature

of the information technology industry. The association represents the information technology industry's interest in such issues as intellectual property protection, government procurement, human resources, telecommunication policy, taxation, and privacy. Its industry development programs include advocacy on legislative, judicial, and regulatory issues important to its members. ITAA also provides extensive opportunities for business development, particularly for smaller firms seeking partnering relationships, equity financing, joint technology development or marketing arrangements. ITAA ia an active participant in such organizations as the International Coalition on Technology Transfer, the World Information Technology and Service Alliance,the Council of Regional Information Technology Association and the Electronics Roundtable.

REASONS FOR SUPPORTING PETITIONERS

ITAA supports Petitioners' Petition for Writ of Certiorari because it considers the issue presented by this case very important to its members. It is filing this Brief to bring that fact to the Court's attention as it considers whether to grant Petitioners' Petition. Thus, it is important for this Court to know that this not a case of just the Petitioners saying the issue is important; rather it is also the 6700 direct and affiliated members of the ITAA stating the issue is important. ITAA believes the research and experimental deduction is very important to the future of this country. The United States has recently returned to its position as the most productive economy in the world on the strength of new technologies. ITAA believes that many of these new technologies would not have been developed without the benefit of the research and experimental deduction and the free enterprise system. Therefore, ITAA believes Section 174 should be liberally interpreted in a manner consistent with the free enterprise system to promote continued

economic development as Congress intended when enacting the statute. ITAA believes that anything which can be construed as hindering research and development is bad, and thus, views the Fifth Circuit decision herein as having a negative impact on research and development in the United States. For this reason, ITAA strongly supports Petitioners' Petition. It is extremely important that the applicability of the research and experimental deduction be clearly understood and applied in a manner consistent with the free market system. The Fifth Circuit's decision is contrary to the notions embodied in our free enterprise system for the reasons given by the Petitioners. In contrast, ITAA believes the degree of control argued for by the Petitioners will do as Petitioners state; maintain the integrity of Section 174; provide the statute's benefits to its intended recipients; and deny its benefits to those seeking to abuse it for tax avoidance purposes.

Although it is coincidental that Petitioners selected the computer software industry as its example of the economic reality of research and development, it nonetheless allows ITAA to comment on Petitioners' point with authority. ITAA agrees with Petitioners' analysis of the economic and business realities of research and development and its comments about the future of strategic alliances in the computer software industry. It is virtually impossible for any start-up company to maintain majority control of its technology. The costs of producing a marketable product are just too great for a start-up company to bear itself. Partnering of some sort is required. ITAA believes that the form of partnering should be left to the free market system and should not be constrained by the Courts. The fact is that Section 174 is about commerce; it is not about any social issue. Thus, business realities cannot be ignored when determining the scope of its application, and business reality requires the "freedom of decision" concept argued for by the

Petitioners without fear of penalty. At least in the area of research and experimental expenditures, that freedom from penalty does not exist with the Fifth Circuit's decision in this case.

ITAA also feels it is important to bring this Court's attention to one other aspect of this Amicus Brief in support of Petitioners' Petition for Writ of Certiorari. ITAA has had neither adequate time nor access to the records of this case to know whether under the particular facts herein and the standard of control argued for by Petitioners a deduction should be allowed in this case. Even if it did, it would not be appropriate for ITAA to comment on the facts of this case. Rather, ITAA is filing this Brief to argue that the issue presented by Petitioners is important enough to a large segment of persons affected by Section 174 to warrant granting the Writ of Certiorari. ITAA believes the standard argued for by Petitioners is the correct standard.

CONCLUSION

WHEREFORE, ITAA urges this Court to grant its motion for leave to file this *amicus curiae* brief and ultimately grant Petitioners' Petition for Writ of Certiorari in order to resolve this important issue of law.

Respectfully Submitted,

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